TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 487.

THOMAS SWAFFORD, PLAINTIFF IN ERROR,

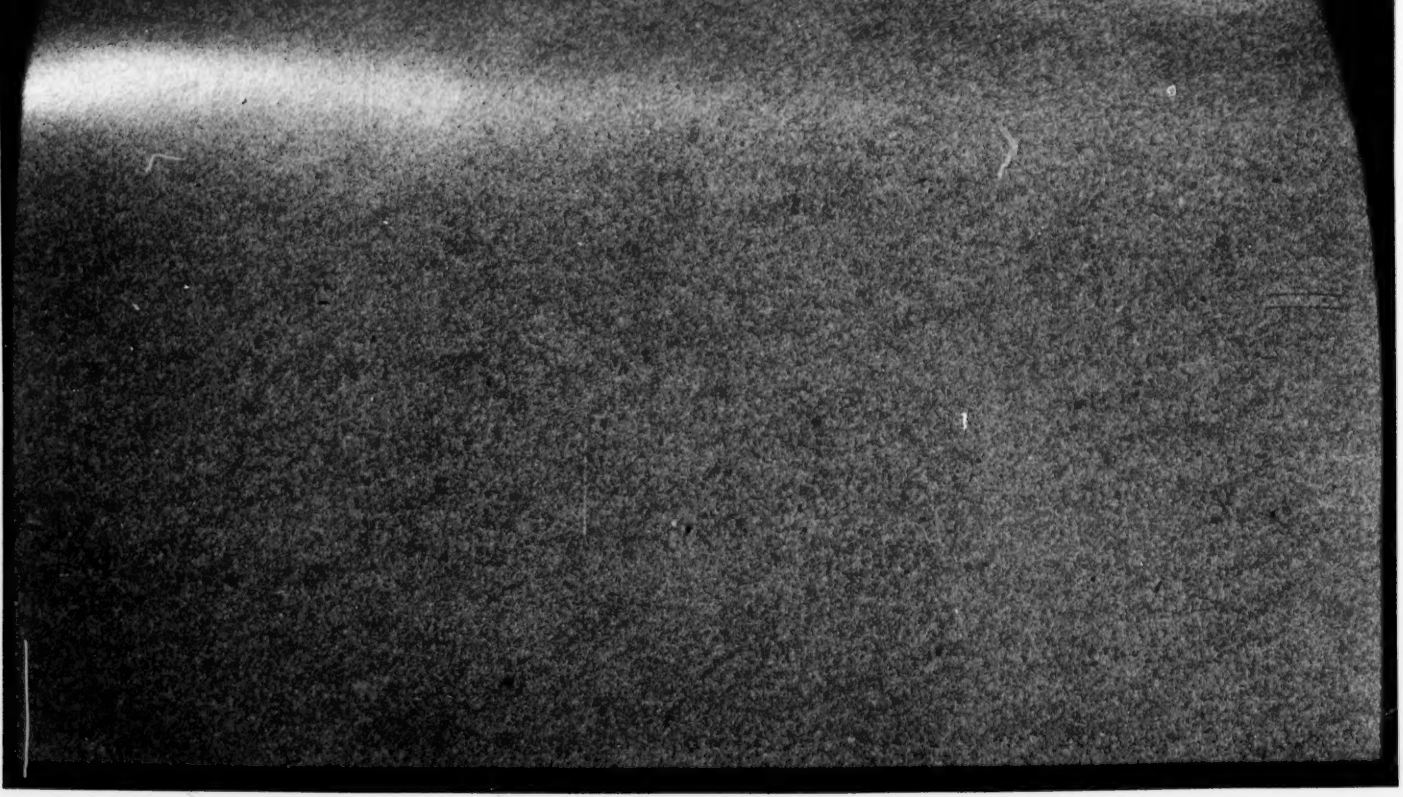
vs.

W. A. TEMPLETON AND S. H. PEABODY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

FILED DECEMBER 2, 1901.

(18,340.)



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Judd & Detweiler, Printers, Washington, D. C., December 16, 1901.

1 Be it remembered, that at a circuit court of the United States begun and held for the southern division of the eastern district of Tennessee, at the court-rooms in the city of Chattanooga, within said district and the sixth circuit, on the first Monday, it being the 7th day of October A. D., 1901. Present and presiding, the Honorable C. D. Clark, district judge. Among the proceedings had were the following, to wit:

THOMAS SWAFFORD, Plaintiff,
vs.
W. A. TEMPLETON, S. H. PEARCY, Defendants. } No. 698. At Law.

Be it remembered, that heretofore, to wit, on the second day of February, in the year of our Lord, nineteen hundred and one, came the plaintiff herein by his attorney, and filed in the clerk's office of the court aforesaid, his certain oath *in forma pauperis*, which said oath is clothed in the words and figures following, to wit:

Oath in Forma Pauperis.

I, Thomas Swafford, do solemnly swear that I am a citizen of the United States and of the State of Tennessee, and have been for a number of years last past, and that I am about to commence an action in the United States circuit court for the southern division of the eastern district of Tennessee at Chattanooga and because of my poverty I am unable to pay the costs of said suit or action or to give security for the same and that to the best of my belief I am entitled to the redress, by me sought in said suit or action, and that there is
2 no one else interested therein who is able to pay or secure said costs. Said suit is an action for damages against W. A. Templeton and S. H. Pearcy for wrongfully refusing me the right to vote and for declining to receive, take or deposit my vote or ballot and for registering the same, for a member of the U. S. Congress and presidential electors, all at the November election, 1900 in Rhea county, Tennessee.

his
THOMAS x SWAFFORD.
mark.

Sworn to and subscribed before me 2/1–1901.
W. B. MILLER,
Notary Public, Rhea County, Tenn.

Attest:
W. B. MILLER.
ALICE AYRES.

And on the same day, to wit, on the 2nd day of February, 1901, there was issued out of the clerk's office of said court, our certain summons, directed to the marshal of said district and against the defendants herein, clothed in the words and figures following, to wit:

Summons.

The President of the United States of America to the marshal of the eastern district of Tennessee, Greeting:

You are hereby commanded to summon W. A. Templeton, S. H. Pearcy if to be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit, for the southern division of the eastern district of Tennessee at the Federal court-rooms in Chattanooga, in said State, on the first Monday in April next, then and there to answer Thomas Swafford in an action to his damage $2,500.00.

Herein fail not and have you then and there this writ.

3 Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States at Chattanooga, in the said district, the 2d day Feb'y in the year of our Lord 1901 and of our Independence 125th.

Court Seal of Feb'y.

HENRY O. EWING, *Clerk*,
By R. M. WATKINS,
Deputy Clerk.

Rec. Feb. 8—at Chattanooga, executed as commanded at Dayton, Rhea Co. Tenn., Feb. 12–13 1901.

C. W. McCALL,
Deputy Marshal.

Filed Feb. 22 1901.

HENRY O. EWING, *Clerk.*

And afterwards, to wit, on the 2d day of April, A. D. 1901, the following declaration was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Declaration.

In the U. S. Circuit Court in and for the Sixth Circuit, Sitting at Chattanooga, in the Southern Division of the Eastern District of Tennessee.

THOMAS SWAFFORD
vs.
W. A. TEMPLETON and S. H. PEARCY.

Declaration.

Thomas Swafford, a white citizen of the tenth civil district in Rhea county, in the division and State aforesaid, plaintiff herein, complains of defendants W. A. Templeton and S. H. Pearcy of a plea of damages, for—

That, heretofore, to wit, on the 6th day of November, 1900, plaintiff, a natural-born citizen of the United States and for more than thirty years last past a citizen and resident of the tenth civil district, in the county of Rhea in the southern division of the

eastern district of Tennessee, was a legally qualified voter and elector, possessing all the qualifications necessary to the elective franchise under the laws and Constitution of the United
4 States and under the constitution and valid laws of the State of Tennessee and was entitled to cast his ballot at the court-house voting precinct in said tenth district (it being the only voting precinct therein) and for a Congressman in the Fourth congressional district in Tennessee (said county being in the Fourth congressional district in Tennessee) and for presidential electors in and for said State at the general November election last. The defendants were a majority of a board of three election judges, appointed by the board of election commissioners in and for Rhea county to hold said election at the aforesaid court-house or voting precinct in said county, and the said board of election judges had the custody and control of the ballot-box used and the ballots deposited in said November election, and as such it was their legal duty to receive and deposit all legal ballots tendered by legally qualified electors on the occasion of said election; and plaintiff did, at the time aforesaid, offer to deposit his said ballot, he being a legal voter at the time, and tendered same to said board of judges, which was then and there wilfully, deliberately, wrongfully and illegally rejected by the defendants as a majority of said board of judges, and they declined to receive, deposit and count the same, over the protest of the plaintiff and of the third or minority member of said board of judges, for the reason that plaintiff, because of his illiteracy, was unable to read and write so as to select and mark the names of the candidates for Congress and presidential electors which he desired to vote for, and whose names, together with some thirty others, were printed on what is known as a Dortch-law ballot presented to plaintiff, and he was required, without assistance from any one, to select and mark the names of the persons he desired to vote for from thw whole number printed on said ballot; and being unable, because of his illiteracy aforesaid, so to do, plaintiff was by the defendants deprived of his right to vote, they insisting
5 that unless he, without any assistance, selected and marked the names he desired to vote for, as aforesaid, his ballot would not be received and he would not be allowed and was not allowed to vote.

Plaintiff then and there insisted to defendants that he was not bound to comply with the Dortch-law requirements and to vote or mark a Dortch-law ballot, but that he was entitled to vote independent of the Dortch-law requirements and the ballot contemplated by sections 1259–'60, Shannon's Code of Tennessee and in the legal manner required of voters not residing in territory of sufficient population to warrant the application of the Dortch law, to wit, in towns or civil districts of less than 2,500 population, according to the previous Federal census. Plaintiff offered to vote and was a legally qualified voter and was so held and admitted by defendants in all respects, except they insisted that he should comply with the Dortch-law requirements, for that, under the provisions of chapter 163, Acts of General Assembly of Tennessee for the Year

1899, the Dortch-law applied to the civil district in which plaintiff resided, as laid out by chapter 163, and plaintiff avers it to be a fact that if said chapter 163 be constitutional and valid, then that he was subject to the Dortch-law requirements, and defendants were right in the rejecting of his ballots, but he avers and insists that chapter 163 aforesaid was unconstitutional and invalid in this: That, at the time of passing chapter 163 and for some time prior thereto, the county of Rhea was composed of fifteen civil districts, regularly laid out in all respects pursuant to constitutional and statutory provisions of the State, by the county court of said county, the plaintiff residing in the tenth or court-house district, that none of said fifteen districts was of 2,500 or more population, nor was there a town in any of said districts of said population by the preceding Federal census; for purely partisan purposes and with no other end in view, the General Assembly of Tennessee, being of the opposite political complexion to that of
6 plaintiff and the great majority of voters resident in and of the territory constituting the third and fourth civil districts of Rhea county as laid out by chapter 163, and said General Assembly being of the same political complexion as the majority of voters residing in the first and second civil districts of said county as laid out by chapter 163, passed said legislative enactment (chapter 163 aforesaid) merging into each of the four civil districts as therein created, three or more of the former civil districts in said county of Rhea, and merging into the third civil district the original 5th, 6th, 7th, 9th and 10th civil districts and as laid out by said partisan legislative enactment, the third and fourth civil districts of said county were of more than 2,500 population each, while the first and second civil districts were of less than 2,500 each, and consequently under the laws of Tennessee then existing, the Dortch law as compiled sections 1231–1258 inclusive, Shannon's Code of Tennessee, would apply to the voters in the third and fourth civil districts, but not to those of the first and second districts of said county: this enactment as stated, was for purely partisan and political purposes and none other and with a view of depriving plaintiff and a large number of others of like situation and educational attainments, residents of the territory affected thereby, of the rights and privilege of voting: the effects of applying the Dortch law to said third and fourth civil districts and not to the first and second districts of said county was and is to reverse and overcome an adverse political majority of 250 in said county of Rhea and to make it the same political complexion as the legislature which passed chapter 163.

At the time of passing chapter 163 aforesaid, there were various other counties in and throughout the State of Tennessee substantially situated as Rhea county with substantially the same numerical population, area, wealth, and the population of which was of substantially the same character, wealth, social and educational attainments and in all other material respects similar to the population of Rhea county.

7 No legislation whatever, similar to chapter 163, was enacted with reference to the other counties similarly situated and circumstanced as Rhea; the civil districts as laid out by the county courts of such other counties, were left intact by the legislature, and the Dortch law did not and does not apply to the civil districts in such other counties, and as a consequence plaintiff avers and insists that said chapter 163 was class legislation, in violation of the Federal Constitution and was therefore void.

Again, no voting precincts were ever fixed in the district created by chapter 163, and the county court of Rhea county, subsequent to the passage of said enactment and some months prior to said November election, in regular session, passed a resolution to the effect that chapter 163 was invalid and class legislation and of no effect whatever, and that the former fifteen civil districts, together with the voting precincts therein, as previously fixed by said county court under the general laws and constitution of Tennessee, continued to exist, unaffected by chapter 163; but if said chapter 163 did operate to change said districts as formerly laid out, then that it (the county court of Rhea county) by chapter 163 could not be deprived of its right to change, alter and modify the civil districts in Rhea county, and it thereupon proceeded, by resolution, to re-establish the fifteen civil districts in said county and voting precincts in each district, all exactly as they existed prior to passing chapter 163, the court-house precinct aforesaid being the only voting precinct in said tenth district.

And plaintiff avers that at the time of passing chapter 163 the county courts of the remaining counties in Tennessee, many of which were substantially situated as Rhea, as aforesaid, as to population, area, etc., were left free to exercise the legal power and right to change, alter and modify civil districts and create new ones, and that the restriction placed on the county court of Rhea county,

8 as the representative of the people of said county in this matter, was class legislation and in this respect invalid and void.

No voting precincts were created by any authority in and for the four civil districts of said county, as laid out by chapter 163, but the election commissioners of said county advertised the November election aforesaid to take place in the four civil districts but in each of said civil districts at more than one voting precinct, designating and recognizing as the voting precincts fourteen of the fifteen precincts as formerly established by said county court, the court-house precinct aforesaid being one of the fourteen.

The plaintiff avers that it was and is far more expensive to hold elections under the Dortch and registration laws of Tennessee, applying to civil districts of more than 2,500 population, than to hold same independent thereof and that he (plaintiff) together with a large number of other citizens and residents of the territory comprised in the third and fourth civil districts of Rhea county, as defined by chapter 163, were tax-payers of said county and State and of the United States, as aforesaid, and that, as such tax-payers, they were compelled to contribute to the expenses incident to elec-

tions in said county of Rhea, which expenses have to be met from the treasury of said county, and that therefore the enactment of chapter 163 was special or class legislation, imposing upon the taxpayers of the territory composed in the third and fourth districts onerous burdens not imposed upon others in said State of like class and station.

Prior to said November election and subsequent to the passage of chapter 163 and the action of the county court of Rhea county aforesaid, the Federal census of 1900 was taken, compiled and published, in the doing of which the Department of the Interior and the Federal Census Bureau, each and both, declined and refused to conform to chapter 163, for the reasons before stated, and
9 instead recognized fifteen civil districts as laid out by the county court aforesaid, and in none of which was there by said last Federal census nor any previous Federal census as many as 2,500 population.

Plaintiff bore arms in the late civil war in support of the United States Government, and prior to and ever since has enjoyed the elective franchise and did so prior to the adoption of the fourteenth amendment to the Federal Constitution, and avers that by its adoption and by the adoption of sections 5, 8 and 17 of article 1, section 1 of article 4 and sections 8, 16 and 11 article 11 of the constitution of Tennessee, existing at the time of the adoption of said 14th amendment to the Federal Constitution, he (plaintiff) became and was possessed of the right of suffrage as an immunity or privilege of citizenship, of which he could not be deprived by the enactment of chapter 163 under the circumstances aforesaid.

Plaintiff presented his ballot at the time and in the manner required by law, and did all things else necessary to enable him to exercise the elective franchise in the civil districts of less than 2,500 population, and the defendants admitted and conceded that he was entitled to vote, except that he should select and mark the name of the candidate for Congress and the names of the presidential electors and other persons for whom he desired to vote as required by the Dortch law in Tennessee, and that he plaintiff, must do so without assistance of any kind, which he (plaintiff) altho' a man of good eyesight and no physical disability, was unable to do, because of his illiteracy and altho' he had repeatedly attempted to learn to read and write sufficiently to enable him to do so.

The facts and circumstances hereinbefore charged were well known to defendants, and plaintiff then and there insisted by himself and his counsel that chapter 163 aforesaid was unconstitutional and invalid, by reason of all the facts and circumstances
10 aforesaid, and that he (plaintiff) was entitled to vote independent of the Dortch-law requirements, all of which was denied to him, and his vote was declined and not counted and his ballot was not received by defendants as a majority of said board of judges, all to plaintiff's damage the sum of $2,500, exclusive of interest and costs.

Wherefore plaintiff sues and alleges that the matter in controversy arises under the laws and Constitution of the United States

and is of the character cognizable by this court and of over $2,000 in amount, exclusive of interest and costs, and plaintiff demands a jury to try the cause.

BURKETT, MILLER & MANSFIELD,
Attorneys for Plaintiff.

And afterwards, to wit, on the 16th day of April, 1901, came the defendants and filed their certain demurrer to the declaration herein, which said demurrer is in the words and figures following, to wit:

Demurrer.

In U. S. Circuit Court, Chattanooga, Tennessee.

THOMAS SWAFFORD
vs.
W. A. TEMPLETON & S. H. PEARCY.

Demurrer of defendants, W. A. Templeton & S. H. Pearcy, to the declaration in said case.

Said defendants demurr to said declaration because

(1.) The declaration shows that these defendants merely acted as sworn officers of the State, being two of the three election judges appointed by law to hold said election and that the plaintiff was allowed by said judges, the same privilege and the same opportunity as a citizen and voter to cast his vote which was allowed other citizens in said civil district. The declaration does not allege that defendants acted maliciously or made any discriminations
11 against the plaintiff or denied him any right which the law of the State under which defendants were appointed and which they were sworn to execute accorded to other citizens and voters of said civil district.

(2.) The declaration shows that the plaintiff was a citizen of the civil district constituted by law under chapter 163 of the act of the assembly of Tennessee of the year 1899. This said civil district was of a population of 2,500 or more, that defendants and one other were appointed by law as election judges to hold said November election for the year 1900 for said civil district where the plaintiff resided. The declaration shows on its face that the plaintiff was not denied the right to vote as a citizen and voter of said election district, but was accorded the right and opportunity to vote, the same as other citizens and voters of said civil district and that the failure of the plaintiff to vote was because he could not comply or declined to comply with the requirements of said law.

(3.) The declaration shows that said civil district in which the plaintiff resided was constituted by said act of the assembly for the year 1899 and that said election was held under the provisions of said act. The allegation in said declaration that said act of the assembly was annulled and repealed by the county court of Rhea county must be taken as nugatory, inasmuch as said county court is not entitled by law to repeal or annul an act of the assembly of

the State of Tennessee. The plaintiff's only claim that he was denied the right to vote, is based upon his allegation that said act of assembly was repealed and annulled by said resolution of the county court of Rhea county.

(4.) The declaration shows no damage to the plaintiff and no injury inflicted upon him by defendants. There is no allegation that defendants did anything to interfere with the plaintiff's alleged right to vote, except merely to insist that the plaintiff should comply with the law of the State under which said election was held and under which defendants were acting.

(5.) The declaration shows no election except the one held
12 under said act of 1899, chapter 163,—it shows that defendants and judges of said election, faithfully and without malice enforced the provisions of the law under which they were appointed and sworn and for this they are not liable in damage to plaintiff.

Whereupon the defendant demurs and prays judgment.

TEMPLETON & CARLOCK, *Sol's.*
A. P. HAGGARD, "

We certify that in our opinion the foregoing demurrer is well founded.

TEMPLETON & CARLOCK,
A. P. HAGGARD, *Sol's.*

STATE OF TENNESSEE, }
Rhea County. }

Personally came W. A. Templeton & S. H. Pearcy and made oath in due form of law that the foregoing demurrer is not interposed for delay.

S. H. PEARCY.
W. A. TEMPLETON.

Subscribed and sworn to before me this 15th April, 1901.

W. L. GIVENS,
[SEAL.] *Notary Public.*

And afterwards to wit, on the 30th day of April, A. D. 1901, the Honorable C. D. Clark, district judge filed an opinion in said cause which said opinion is clothed in the words and figures following, to wit:

Opinion.

THOMAS SWAFFORD
v.
W. A. TEMPLETON ET AL. } Eastern District Tenn. Decided April 30th, 1901.

The demurrer in this case does not raise what it seems to me is the most serious objection to the suit, namely the question of
13 jurisdiction. The demurrer may possibly be construed as presenting that issue, but it is doubtful. The plaintiff does not content himself with the averment that he was wrongfully and maliciously or illegally deprived of the right to vote in a national

election, accompanied with the further averment that he was qualified to vote under the Constitution and laws of the United States and of the State of Tennessee, so as to bring the case within the ruling in Wiley *v.* Sinkler, 179 U. S., 61.

On the contrary the declaration goes further than this and avers specifically and throughout impliedly shows, that the plaintiff was denied no right secured to him under the Constitution and laws of the United States, but on the contrary avers that his right to vote was fully acknowledged, provided he would comply with the statute of the State called the Dortch law, which regulates the exercise of the elective franchise in this State. It is distinctly averred and is plainly evident, that plaintiff was denied the right to vote because he expressly refused to comply with this statute of the State called the Dortch law, upon the ground that an act of the General Assembly, chapter 163 of the act of 1899, extending the Dortch law to the district of plaintiff's residence, is unconstitutional as applied to the district in and the precinct at which the plaintiff was attempting to vote. The action in nowise depends upon the theory or proposition that the Dortch law in its general application is unconstitutional. On the contrary the constitutionality of the act has been declared by the supreme court of the State, (Cook *v.* State, 90 Tenn., 408), and such a conclusion is accepted by the courts of the United States, Mason *v.* Missouri, 179 U. S., 348.

The plaintiff's suit proceeds distinctly upon the grounds: First, that he was denied the right to vote because of a failure to comply with the Dortch law and second, that the special act of the legislature, chapter 163 of the act of 1899, extending the Dortch law to the district of which the plaintiff is a citizen is unconstitutional. The alleged invalidity of the act is based upon its supposed conflict with
14 the constitution of the State, and not with the Federal Constitution. The special statute attending the Dortch law to the district of which plaintiff is a citizen is not only not alleged to infringe any provision of the Constitution of the United States, but it is perfectly obvious that the statute is valid so far as any provision of the Federal Constitution is concerned. The statute of the State makes no discrimination against the plaintiff on account of the attempt to exercise any Federal right whatever, nor did the registration commissioners discriminate against the plaintiff, or undertake directly or indirectly to deny or invade any Federal right or immunity. In regard to the exercise of the elective franchise the plaintiff stood exactly on an equal footing with every other citizen of his district, and if plaintiff's action can be successfully prosecuted, it is not because of any rights secured to him by the Constitution of the United States but on account of rights secured to him by the constitution of the State, namely protection against special or class legislation.

As the declaration sets out specifically and fully the issue, and the only issue, involved in the case and on which the action proceeds, it clearly appears that there is no Federal question, and that this court is without jurisdiction, and unless the action really and substantially involves a Federal question, the court is without juris-

diction or power to entertain the suit. The action must be one which really and substantially involves a Federal question before the court may entertain jurisdiction of a case, which must turn on a question which is clearly non-Federal in its nature.

The suit is accordingly dismissed with costs. The demurrer construed as raising this issue is well taken, but it is so doubtful whether it presents the question on which the suit is dismissed, I desire the entry to show that the suit is dismissed upon the demurrer, as well as by the court of its own motion. From this ruling the writ of error must be prosecuted direct to the Supreme
15 Court of the United States, as the dismissal is on the sole ground that there is no Federal question involved, and the court is therefore without jurisdiction.

CLARK, *J.*

And afterwards, to wit: on the first day of May, A. D. 1901, an entry was made upon the jo-rnal of said court, which said entry is clothed in the words and figure- following to wit:

Entry.

Journal G, page 198.

THOMAS SWAFFORD
vs.
W. A. TEMPLETON ET AL. } No. 698.

This cause came on for hearing upon the demurrer to the declaration, which being fully understood by the court is sustained. And it is ordered that the suit be dismissed and plaintiff pay all costs for which execution is awarded.

The dismissal being solely on the want of jurisdiction.

And afterwards to wit: on the seventh day of November, A. D. 1901, there was filed in the clerk's office a petition for writ of error and oath *in forma pauperis*, clothed in the words and figures following, to wit:

In the Supreme Court of the United States, at Washington, D. C.

THOMAS SWAFFORD
vs.
W. A. TEMPLETON ET AL.

Petition of Thomas Swafford in Above Cause.

To the honorable judges of the United States Supreme Court:

Now comes Thomas Swafford, plaintiff in error, and petitions this honorable court to allow writ of error to be directed to the circuit court of the United States for the southern division of the eastern district of Tennessee, to remove this cause to the Supreme Court of the United States at Washington, D. C., for a review thereof,
16 the record in the case lately pending in said court below, wherein above-named Thomas Swafford, plaintiff in error,

was plaintiff, and the above-named defendants in error were defendants, and particularly the record of the judgment rendered by said circuit court in the said cause, wherein the said court below sustained the demurrer of the defendants to the complaint of the plaintiff and dismissed the plaintiff's said cause at his costs, and declined to take and entertain jurisdiction of this cause, for what it conceived want of legal jurisdiction by said circuit court; and said judgment was duly entered on record therein on the 1st day of May, 1901; that plaintiff be allowed to perfect this appeal without filing the bond, as required by law, and without costs and fees of the clerk or other officers of this court, upon his affidavit made and filed in this cause according to law,

Your petitioner respectfully states that he has this day filed herewith his assignment of errors, committed by the court below in said cause and intended to be urged by your petitioner and plaintiff in error in the prosecution of this his suit in error.

BURKETT, MILLER & MANSFIELD,
Attorneys for Plaintiff in Error.

I, Thomas Swafford, do solemnly swear that I am a citizen of the United States and of the State of Tennessee, and have been for a number of years last past and that I am about to sue out a writ of error from the Supreme Court of the United States to correct a judgment rendered against me in the circuit court of the United States at Chattanooga, Tennessee in the case of myself against W. A. Templeton *et als.*, and because of my poverty, I am unable to pay or secure the costs of said writ of error or action or to give security for the same, and that to the best of my belief, I am entitled to the redress by me sought by said writ of error or action and that there is no one else interested therein who is able to pay or secure said costs.

Said suit is an action for damages against W. A. Templeton and S. H. Pearcy for wrongfully refusing me the right
17 to vote and for declining to receive, take or deposit my vote or ballot for a member of the United States Congress and presidential electors at the November election, 1900, and for rejecting same, all in Rhea county, Tennessee.

his
THOMAS x SWAFFORD.
mark.

Subscribed and sworn to before me this 30 day of October, 1901.

[SEAL.] M. B. HICKS,
Notary Public.

And on the same day, to wit: on the seventh day of November, A. D. 1901, there was filed in the clerk's office of said court an assignment of errors, clothed in the words and figures following, to wit:

In the Supreme Court of the United States.

THOMAS SWAFFORD
vs.
W. A. TEMPLETON ET AL.

Assignment of Errors.

The plaintiff in this action, in connection with his petition for writ of error, makes the following assignment of errors, which he avers exists:

(1.) The court erred in sustaining the demurrer of the defendants.

(2.) The court erred in dismissing plaintiff's suit.

(3.) The court erred in conceiving that no Federal question was involved.

(4.) The court erred in conceiving that it was without jurisdiction or power to entertain the suit.

(5.) The court erred in dismissing the suit of its own motion.

BURKETT, MILLER & MANSFIELD,
Attorneys for Plaintiff.

18 And on the same day to wit: on the seventh day of November, A. D., 1901, an entry was made on the journal of said court which said entry was clothed in the words and figures following, to wit:

Entry.

Journal G, page 292.

On the petition, assignment and affidavit of Thomas Swafford, it is ordered that writ of error from the Supreme Court of the United States, issue to have reviewed in said Supreme Court the final decree heretofore filed and entered herein and same is hereby allowed and that a certified transcript of the record and all proceedings therein be forthwith transmitted to said United States Supreme Court and plaintiff having taken the oath prescribed for poor persons, such writ of error will be allowed, record transmitted and proceedings had without costs or fees of clerk or other officers of said Supreme Court of United States and the circuit court, from which said proceedings and cause are removed.

Dated at Chattanooga, this Oct. 31, 1901.

C. D. CLARK, *Judge.*

And on the same day to wit: on the seventh day of November, A. D., 1901 a certificate of the judge was filed in the clerk's office of said court, which said certificate was clothed in the words and figures following, to wit:

In this cause I hereby certify that the order of dismissal herein made is based solely on the ground that no Federal question was involved, and that the declaration, in my opinion, disclosed the infraction of no right arising under or out of the Federal laws or

Constitution; and that treating the demurrer as presenting this question of jurisdiction, and acting also independently of the demurrer, and on the court's own motion, the suit is dismissed
19 only for the reasons above stated; that is, that the controversy, not arising under the laws and Constitution of the United States, there is consequently no jurisdiction of the circuit court of the United States.

This certificate is made conformably to act of Congress of March 3, 1891, chapter 517, and the opinion filed herein April 30th, 1901, is made a part of the record and will be certified and sent up as a part of the proceedings, together with this certificate.

This 9th day of November, 1901.

C. D. CLARK,
Judge Holding the Circuit and District Courts at Chattanooga, Tenn.

THE UNITED STATES OF AMERICA,
Eastern District of Tennessee, Southern Division, } *ss:*

I, Henry O. Ewing, clerk of the circuit court of the United States of America, within and for the district aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above-entitled cause, as the same appears of record and on file in the clerk's office of said court.

Seal Circuit Court of the United States, Eastern District of Tennessee.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Chattanooga, Tennessee, this 22nd day of November, A. D. 1901.

HENRY O. EWING, *Clerk.*

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States to W. A. Templeton and S. H. Pearcy and their attorneys, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, D. C., within thirty days from the date of this writ, pursuant to a writ of error, filed in the office of the clerk of said Supreme Court, wherein Thomas Swafford is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 8th day of Nov., 1901, and of the Independence of the United States the one hundred and twenty-sixth.

C. D. CLARK,
United States District Judge, Presiding in the Circuit Court at Chattanooga, Tennessee.

Attest: HENRY O. EWING, *Clerk.*

[Endorsed:] Service hereof acknowledged and copy received on this Nov. 8, 1901. Templeton & Carlock, att'ys for W. A. Templeton. W. L. Givens, att'y for S. H. Pe-rcy.

21 *Writ of Error.*

United States Supreme Court.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Thomas Swafford, plaintiff and W. A. Templeton — S. H. Pearcy defendants a manifest error hath happened, to the great damage of the said Thomas Swafford as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if the judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court together with this writ, so that you have the same at Washington in said circuit, on the * 7th day of December next, in the said circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8th day of November in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-sixth.

Seal Circuit Court of the United States, Eastern District of Tennessee.

HENRY O. EWING,
Clerk of the Circuit Court of the United States, East. Dist. of Tennessee.

Allowed by
C. D. CLARK, *Judge.*

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* Not exceeding 30 days from the day of signing the citation.

[Endorsed:] Filed Nov. 7, 1901. Henry O. Ewing, clerk.
Endorsed on cover: File No. 18,340. E. Tennessee C. C. U. S. Term No. 487. Thomas Swafford, plaintiff in error, *vs.* W. A. Templeton and S. H. Pearcy. Filed December 6th, 1901.